

STATE OF MICHIGAN
COURT OF APPEALS

In re S. N. LEWIS, Minor.

UNPUBLISHED
March 10, 2016

No. 327496
Kalamazoo Circuit Court
Family Division
LC No. 2008-000446-NA

Before: METER, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Respondent father appeals as of right the trial court’s order terminating his parental rights to a minor child, SL,¹ under MCL 712A.19b(3)(a)(ii) (desertion for 91 or more days), (g) (failure to provide proper care or custody), (h) (parent is imprisoned and fails to provide proper care and custody), and (j) (child will be harmed if returned to parent). We affirm.

Respondent argues that petitioner did not provide him with reasonable reunification efforts. We review respondent’s unpreserved argument for plain error. *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011).

Generally, “petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights,” *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008), except where aggravated circumstances exist, MCL 712A.19a(2). They do not exist in this case. However, “[w]hile the DHS² has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). In this case, the record demonstrates that petitioner repeatedly contacted respondent to attempt to encourage him to participate in services over a lengthy period of time and that respondent almost completely ignored those attempts. Thus, services were available to

¹ This case involved SL and two other children. Other respondent parents were involved in the case, but they are not parties to this appeal.

² Petitioner in this case is the Department of Health and Human Services (DHHS), which is comprised of the former Department of Human Services (DHS) and the former Department of Community Health.

respondent, but he failed to participate in them. Additionally, the record largely contradicts respondent's claim that petitioner failed to listen to him when he recommended his sister as a placement for SL; indeed, there was conflicting testimony regarding whether respondent himself actually recommended to petitioner that SL be placed with the sister. Regardless, the record is clear that petitioner investigated the sister and found that SL was in a better placement with her siblings. The sister did not want to care for the siblings in addition to SL. Respondent fails to show any plain error in the trial court's finding that petitioner provided him with reasonable reunification efforts. *VanDalen*, 293 Mich App at 135.

Respondent also challenges the trial court's findings regarding the statutory grounds for termination and SL's best interests. To terminate parental rights, a trial court must find the existence of a statutory ground for termination in MCL 712A.19b has been established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). After a trial court has properly found a statutory ground for termination, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence that termination of parental rights is in the child's best interests." MCL 712A.19b(5); *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). A trial court's factual findings in terminating parental rights, including a finding that a ground for termination has been established and that termination is in a child's best interests, are reviewed for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

MCL 712A.19b(3)(a)(ii) provides that a parent's rights may be terminated if the parent "has deserted the child for 91 or more days and has not sought custody of the child during that period." A parent's rights may be terminated under MCL 712A.19b(3)(a)(ii) if the parent has little or no contact with the child and the parent fails to comply with services designed to provide the children with a stable home. See *In re Hall*, 188 Mich App 217, 223-224; 469 NW2d 56, 59 (1991), *In re Laster*, 303 Mich App 485, 492; 845 NW2d 540 (2013) (affirming termination of parental rights under MCL 712A.19b(3)(a)(ii) where the parent merely had "some phone contact" with the children and did not visit them, the parent did not provide support for the children, and the parent failed to comply with the service provided to him), and *In re Mayfield*, 198 Mich App 226, 230, 235; 497 NW2d 578 (1993) (affirming termination of parental rights under MCL 712A.19b(3)(a)(ii) where the parent did not attend hearings, did not see the child, did not provide financial support, and did not cooperate with services). In this case, from December 2013 until respondent was incarcerated in June 2014, respondent did not attend hearings, he did not visit SL, SL (not respondent) was the one who initiated telephone contact between them a "couple" times, respondent's only financial support of SL was a \$70 gift, and he did not participate in services. Accordingly, the trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(a)(ii). MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Because only one statutory ground for termination need be established to justify termination of parental rights, *Trejo Minors*, 462 Mich at 360, and we affirm termination under (a)(ii), we need not address MCL 712A.19b(3)(g), (h), and (j).

Regarding SL's best interests, respondent's history, SL's need for stability, and the advantages of SL's foster home all weighed in favor of a finding that termination was in SL's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012); *In re*

Jones, 286 Mich App 126, 131; 777 NW2d 728 (2009). The trial court did not clearly err in finding that termination of respondent's parental rights was in SL's best interests. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark T. Boonstra
/s/ Michael J. Riordan